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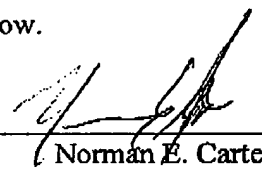
Applicant: John M. Shamoun
Title: Cosmetic Surgery Preview System
Application No.: 10/039,066 Filing Date: January 4, 2002
Examiner: William H. Matthews Group Art Unit: 3738
Docket No.: M-15599 US Confirmation No. 9125

Irvine, California
April 11, 2005

Facsimile: 703-872-9306
Commissioner for Patents
P.O. Box 1450
Alexandra, VA 22313-1450

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Dated: April 11, 2005
Norman E. Carte, Reg. No. 30,455Total No. of Pages: 39 (including this page)

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Application No. 10/039,066

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On April 11, 2005

MacPherson Kwok Chen & Heid LLP

By: 

Monique M. Butler

Attorney Docket No.: M-15599 ^{PATENT} ~~US~~**RECEIVED**
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APR 11 2005

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

John M. Shamoun

Application No.: 10/039,066

Filed: January 4, 2002

For: Cosmetic Surgery Preview System

Examiner: Lebentritt, Michael

Art Unit: 3738

Confirmation No.: 9125

PETITION TO REVIVE
UNINTENTIONAL ABANDONMENT

Mail Stop Petitions
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant respectfully requests that the above identified application, which became abandoned through failure to respond to the office action mailed January 21, 2004, be revived. A copy of the Response to Final Office Action filed May 18, 2004 and the RCE filed August 20, 2004 and accompanying transmittals are enclosed.

The entire delay in submitting a timely response to the Final Office Action was unintentional from the due date until the filing of this petition. It is therefore respectfully requested that this Petition to Revive be granted, and that this application be allowed to issue.

John M. Shamoun
Application No.: 10/039,066
Docket No. M-15599 US
Page 2

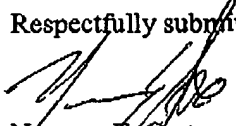
PATENT

CONCLUSION

The Commissioner is hereby authorized to charge the fees listed on the enclosed transmittal and any additional fees which may be required, or credit any overpayment to Deposit Account No. 50-2257.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at (949) 752-7040.

Respectfully submitted,


Norman E. Carte
Reg. No. 30,455

MacPherson Kwok Chen & Heid LLP
1762 Technology Drive, Suite 226
San Jose, CA 95110
Telephone: (949) 752-7040
Fax: (408) 392-6262

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Request For Continued Examination (RCE) Transmittal

Address to:
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P.O. Box 1450
Alexandria, VA 22313-1450

Application Number	10/039,066
Filing Date	January 4, 2002
First Named Inventor	John M. Shamoun
Art Unit	3738
Examiner Name	William H. Matthews
Attorney Docket Number	101108.0002US1

This is a Request for Continued Examination (RCE) under 37 CFR 1.114 of the above-identified application. Request for Continued Examination (RCE) practice under 37 CFR 1.114 does not apply to any utility or plant application filed prior to June 8, 1995, or to any design application. See Instruction Sheet for RCEs (not to be submitted to the USPTO) on page 2.

1. **Submission required under 37 CFR 1.114** Note: If the RCE is proper, any previously filed unentered amendments and amendments enclosed with the RCE will be entered in the order in which they were filed unless applicant instructs otherwise. If applicant does not wish to have any previously filed unentered amendment(s) entered, applicant must request non-entry of such amendment(s).

a. ☒ Previously submitted. If a final Office action is outstanding, any amendments filed after the final Office action may be considered as a submission even if this box is not checked.

i. ☒ Consider the arguments in the Appeal Brief or Rely Brief previously filed on May 18, 2004

ii. ☐ Other _____

b. ☐ Enclosed

i. ☐ Amendment/Reply

iii. ☐ Information Disclosure Statement (IDS)

ii. ☐ Affidavit(s)/ Declaration(s)

iv. ☐ Other _____

2. Miscellaneous

a. ☐ Suspension of action on the above-identified application is requested under 37 CFR 1.103(c) for a period of _____ months. (Period of suspension shall not exceed 3 months; Fee under 37 CFR 1.17(i) required)

b. ☐ Other _____

3. Fees

The RCE fee under 37 CFR 1.17(e) is required by 37 CFR 1.114 when the RCE is filed.

The Director is hereby authorized to charge the following fees, or credit any overpayments, to

a. ☒ Deposit Account No. 502191

i. ☒ RCE fee required under 37 CFR 1.17(e)

ii. ☒ Extension of time fee (37 CFR 1.136 and 1.17)

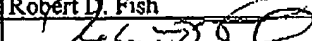
iii. ☐ Other _____

b. ☐ Check in the amount of \$ _____ enclosed

c. ☐ Payment by credit card (Form PTO-2038 enclosed)

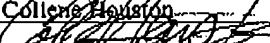
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SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT REQUIRED

Name (Print/Type)	Robert D. Fish	Registration No. (Attorney/Agent)	33,880
Signature		Date	8/20/04

CERTIFICATE OF MAILING OR TRANSMISSION

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as express mail in an envelope addressed to: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 or facsimile transmitted to the U.S. Patent and Trademark Office on the date shown below: Express Mailing Label No. EV 348947445 US

Name (Print/Type)	Collette Houston	Date	8/20/04
Signature			

This collection of information is required by 37 CFR 1.114. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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APR 11 2005

Applicant : Shamoun, John M.
Application No. : 10/039,066
Filed : 01/04/2002
Title : COSMETIC SURGERY PREVIEW SYSTEM
Group./Div. : 3738
Examiner : Matthews, William H.
Client Matter : 101108.0002US1
Customer No. : 34284

Commissioner for Patents
P.O. Box 1450
Washington, D.C. 20231

AMENDMENT AF

ART UNIT 3738

Dear Sir:

In response to the Final Office Action mailed January 21, 2004, please amend the above-identified patent application as follows:

Amendments to the Claims are reflected in the listing of claims, which begins on page 2 of this paper.

Remarks/Arguments begin on page 12 of this paper.

Amendments to the Claims:

This listing of claims will replace all prior listings.

Listing of Claims:

What is claimed is:

Claim 1 (currently amended) A method for providing a preview via a network of the potential effects of cosmetic surgery, the method comprising:

- selecting a cosmetic surgery procedure;
- asking at least one question regarding the body of a patient via the network;
- answering the question(s) via the network; and
- using the answers to form a preview image of the patient showing the potential effects of the selected cosmetic surgery procedure without using an image of the patient.

Claim 2 (previously presented) The method as recited in claim 1, wherein at least one image is provided in association with the question(s) so as to facilitate answering of the question(s).

Claim 3 (previously presented) The method as recited in claim 1, further comprising selecting at least one image which matches some characteristic of a patient.

Claim 4 (previously presented) The method as recited in claim 1, wherein selecting a cosmetic surgery procedure comprises selecting a cosmetic surgery category from the group consisting of:

- a cosmetic surgery procedure for the breasts;
- a cosmetic surgery procedure for the eyes;
- a cosmetic surgery procedure for the removal of fat;
- a cosmetic surgery procedure for the lips;
- a cosmetic surgery procedure for the ears;
- a cosmetic surgery procedure for the face;
- a cosmetic surgery procedure for the hair;
- a cosmetic surgery procedure for the mitigation of scar tissue;
- a cosmetic surgery procedure for the nose;
- a cosmetic surgery procedure for the chin; and

a cosmetic surgery procedure for the cheeks.

Claim 5 (previously presented) The method as recited in claim 4, wherein selecting a cosmetic surgery procedure comprises selecting a specific cosmetic surgery procedure.

Claim 6 (previously presented) The method as recited in claim 4, wherein selecting a cosmetic surgery procedure comprises selecting a specific cosmetic surgery procedure within the selected category.

Claim 7 (previously presented) The method as recited in claim 1, wherein selecting a cosmetic surgery procedure comprises selecting one of a plurality of different breast enhancement procedures.

Claim 8 (previously presented) The method as recited in claim 1, wherein asking at least one question comprises asking a plurality of questions about the present form, e.g., shapes, size, coloration, of body of the patient.

Claim 9 (previously presented) The method as recited in claim 1, wherein asking at least one question comprises asking at least one question about the history of the body of the patient.

Claim 10 (previously presented) The method as recited in claim 1, wherein asking at least one question comprises asking a plurality of multiple choice questions.

Claim 11 (currently amended) The method as recited in claim 1, wherein asking at least one question comprises asking at least some of the following questions having the following corresponding possible answers:

A) How would you describe your breasts?

I have never been pregnant and I have little, if any breast tissue;

I have very nice, small or medium sized B cup breasts with essentially no droopiness;

I have never been pregnant and have little or any breast tissue;

I have very nice C cup breasts with excellent shape and symmetry;

I had B cup breasts prior to pregnancy; at the time of pregnancy, I went to a C or D, and now I have shrunken, small A—B cup breasts with missing volume and not much droopiness;

I had C cup breasts until childbirth, at which time they became D cups; now I have large B cup to C cup breasts which appear droopy;

B) Age?;

C) Weight and height?;

D) Breast size: A cup, B cup, C cup, or D cup?;

E) I Do you have significant asymmetry?;

Yes:

No:

F) My ancestral background is:

Asian;

Mid Eastern;

Afro—American;

American;

Hispanic;

G) My body type is:

Mesomorphic (muscular);

ectomorphic (very thin);

endomorphie (large boned);

H) I would describe my chest wall (if I cut my body in half and looked at it on cross-section) as:

barrel chest;

thin pencil chest;

normal cylinder;

abnormal because it is sunken in at the middle;

abnormal because it protrudes in the middle;

I) I would describe my breast tissue as:

dense (hard to the touch);

fatty (very soft to the touch);

mixed;

J) I would describe my breast shape as:

round;

tubular;

flat with no existing breast tissue, or breast tissue only at the level of the nipple or above, with no breast tissue below the nipple;

perfect teardrop;

K) I would describe my skin as:

stretchy with stretch marks;

very droopy;

thick, virgin type skin with excellent pliability;

L) I have had more than one pregnancy and have breast feed more than one child:

.yes;

no;

M) My weight with the exception of pregnancy was within 10-20 lbs. of normal;

yes;

no;

- N) I would describe my areolae as:
dilated;
stretched and enlarged;
normal dimensions;
normal diameter, very small diameter (less than 3.5 cm);
- O) I would describe the pigment of my areola as:
darkly pigmented;
lightly pigmented;
- P) I would describe my nipple projection as:
large;
normal;
inverted;
- Q) Preexisting history of breast cancer in:
sister;
maternal relative;
one relative, two relatives, greater than two relatives;
- R) I prefer:
a very natural look to my breasts, (conservative);
for relatives or friends to not notice much of an enlargement in clothing; however,
when wearing skimpy clothes or a bathing suit, more noticeable image changes are apparent;
- S) In addition, I desire:
a very natural appearing breast when nude;
an obvious difference in clothing as well as nude and in all clothing wear;
a very fake looking breast with headlight appearance and round, full volume (very
unnatural look nude); and
obvious breast implant look.

Claim 12 (previously presented) The method as recited in claim 1, wherein asking at least one question comprises asking for a plurality of measurement results.

Claim 13 (previously presented) The method as recited in claim 1, wherein asking at least one question comprises asking for the following measurement results:

sternal notch to nipple distance;
bilateral inframammary crease to nipple distance;
nipple to nipple distance; and
bilateral base dimension.

Claim 14 (previously presented) The method as recited in claim 1, wherein asking at least one question comprises asking a plurality of multiple choice questions and asking for a plurality of measurement results.

Claim 15 (currently amended) The method as recited in claim 1, wherein using the answers to ~~from~~ form a preview image of the patient showing the potential effects of the selected cosmetic surgery procedure comprises using the answers to form a preview image of the affected body part.

Claim 16 (currently amended) The method as recited in claim 1, wherein using the answers to ~~from~~ form a preview image of the patient showing the potential effects of the selected cosmetic surgery procedure comprises selecting a pre-existing image which most closely matches a predicted outcome of the cosmetic surgery procedure.

Claim 17 (currently amended) The method as recited in claim 1, wherein using the answers to ~~from~~ form a preview image of the patient showing the potential effects of the selected cosmetic surgery procedure comprises generating a new image which most closely matches a predicted outcome of the cosmetic surgery procedure.

Claim 18 (currently amended) A method for showing potential results of a breast enhancement cosmetic surgery procedure via the Internet without requiring a picture of the prospective patient, the method comprising:

selecting a breast enhancement cosmetic surgery procedure to be performed; asking at least some of the following questions having the following corresponding possible answers:

A) How would you describe your breasts?

I have never been pregnant and I have little, if any breast tissue;

I have very nice, small or medium sized B cup breasts with essentially no droopiness;

I have been pregnant and have little or any breast tissue;

I have very nice C cup breasts with excellent shape and symmetry;

I had B cup breasts prior to pregnancy; at the time of pregnancy, I went to a C or D, and now I have shrunken, small A—B cup breasts with missing volume and not much droopiness;

I had C cup breasts until childbirth, at which time they became D cups; now I have large B cup to C cup breasts which appear droopy;

B) Age?

C) Weight and height?

D) Breast size: A cup, B cup, C cup, or D cup?;

E) I Do you have significant asymmetry ?;

Yes;

No;

- F) My ancestral background is:
Asian;
Mid Eastern;
Afro—American;
American;
Hispanic;
- G) My body type is:
Mesomorphic (muscular);
ectomorphic (very thin);
endomorphie (large boned);
- H) I would describe my chest wall (if I cut my body in half and looked at it on cross—section) as:
barrel chest;
thin pencil chest;
normal cylinder;
abnormal because it is sunken in at the middle;
abnormal because it protrudes in the middle;
- I) I would describe my breast tissue as:
dense (hard to the touch);
fatty (very soft to the touch)
mixed;
- J) I would describe my breast shape as:
round;
tubular;
flat with no existing breast tissue, or breast tissue only at the level of the nipple or above, with no breast tissue below the nipple;
perfect teardrop;
- K) I would describe my skin as:

a very natural look to my breasts, (conservative);
for relatives or friends to not notice much of an enlargement in clothing; however,
when wearing skimpy clothes or a bathing suit, more noticeable image changes are apparent;

S) In addition, I desire:

a very natural appearing breast when nude;
an obvious difference in clothing as well as nude and in all clothing wear;
a very fake looking breast with headlight appearance and round, full volume (very
unnatural look nude); and
obvious breast implant look.

Claim 19 (currently amended) A method for providing a preview via a network of
the potential effects of cosmetic surgery, the method comprising:
providing a selection of cosmetic surgery procedures;
asking at least one question regarding the body of a patient via the network;
receiving answers to the question(s) via the network; and
using the answers to form a preview image of the patient showing the potential
effects of the selected cosmetic surgery procedure without using an image of the patient.

Claim 20 (currently amended) A method for providing a preview via a network of
the potential effects of cosmetic surgery, the method comprising:
selecting a cosmetic surgery procedure;
asking at least one question regarding the body of a patient via the network;
selecting at least one image which matches an anatomical characteristic of a
patient via the network; and
using the selected image(s) to form a preview image of the patient showing the
potential effects of the selected cosmetic surgery procedure without using an image of the
patient.

REMARKS

This is a response to the final Office Action mailed January 21, 2004, in relation to the above-identified patent application. Claims 1-20 are presently pending. Claims 11, 19, and 20 have been amended by this response.

In the Office Action, the Examiner objected to claims 11, 19, and 20 based upon matters of formality. The claims have been amended accordingly.

The Examiner also rejected claims 1-20 under 35 U.S.C. 103(a) as being unpatentable over Massengill, in view of Broderick or Onyshkevych. In this rejection, the Examiner stated that "Massengill lacks the express written disclosure of performing the method without using an image of the patent." Thus, the Examiner is apparently relying upon either Broderick or Onyshkevych to cure the deficiencies of Massengill alone to make the claimed invention obvious.

The Examiner states that Broderick discloses "a method of providing a preview image of a cosmetic procedure for the eyes comprising asking multiple choice questions and using the answers over a network to form the image from a database of pre-existing images for the patent to select from and modify."

However, it is important to appreciate that a "cosmetic procedure" is not a cosmetic surgery procedure. Some of the important differences between a cosmetic procedure and a cosmetic surgery procedure include the techniques used (cutting or otherwise modifying tissue versus painting or otherwise changing the color or appearance of the skin); cost (surgery is much more expensive than the application of cosmetics); results (surgery tends to be permanent, whereas the application of cosmetics tends to be temporary); and reversibility (surgery tends to be difficult to reverse, whereas cosmetics can be easily removed).

Moreover, surgery and cosmetics tend to be practiced by different groups of people. Surgeons are highly trained, well educated, medical doctors. Cosmeticians are sales people.

disclosure for use in a rejection under 35 U.S.C. 103, the disclosure must be sufficiently enabling so as to make the claimed subject matter obvious.

It is respectfully submitted that the material of Onyshkevych is so different from that of the present invention (garment fitting and sizing versus cosmetic surgery) that one would not look to Onyshkevych to solve cosmetic surgery problems in the first place, but even if one did, it certainly is not obvious that the teachings of Onyshkevych with respect to garment fitting and sizing can be applied to cosmetic surgery.

Onyshkevych completely lacks any teaching as to how its fitting and sizing techniques can be applied to cosmetic surgery, and thus does not qualify as a proper reference under 35 U.S.C. 103. It is not even clear that the fitting and sizing techniques of the Onyshkevych reference can actually be applied to cosmetic surgery.

Indeed, even if the fitting and sizing techniques can, in some fashion, be applied to cosmetic surgery, it is important to appreciate that these techniques tend to be inherently gross in their very nature. That is, the information needed for the fitting and sizing of garments is inherently less detailed than the information needed for the cosmetic surgery procedures of the present invention.

Cosmetic surgery is thus one of many applications in a long list of possibilities, without any specific disclosure of how the techniques described with respect to garment fitting may be applied to cosmetic surgery.

Further, the Onyshkevych reference is believed to constitute non-analogous art with respect to the Massengill reference. One looking to solve problems associated with cosmetic surgery simply would not look to garment fitting art for solutions. Thus, there is no motivation to combine the Onyshkevych reference with the Massengill reference.

It is further respectfully submitted that none of the cited prior art addresses the particular problems associated with breast enhancement cosmetic surgery or addresses any of the solutions to these problems addressed by the claimed subject matter.

In view of the foregoing, it is respectfully submitted that none of the cited references, taken either alone or in combination with one another, either disclose or make obvious "selecting a cosmetic surgery procedure; asking at least one question regarding the body of a patient via the network; answering the question(s) via the network; and using the answers to form a preview image of the patient showing the potential effects of the selected cosmetic surgery procedure without using an image of the patient," as recited in independent claim 1.

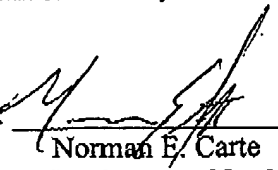
It is further respectfully submitted that none of the cited references, taken either alone or in combination with one another, either disclose or make obvious "selecting a breast enhancement cosmetic surgery procedure" and asking the specific questions of independent claim 18.

It is further respectfully submitted that the dependent claims are independently patentable with respect to the independent claims. None of the cited references either disclose or make obvious the detail of the limitations of the dependent claims. For example, none of the cited references either disclose or make obvious the questions relating to breast surgery of dependent claim 11.

Applicant respectfully request that the Examiner withdraw the holding of finality because the Examiner cited new prior art for new grounds of rejection in this Office Action.

Applicant respectfully submits that all of the claims of the subject patent application are in condition for immediate allowance. Application respectfully requests reconsideration and an early allowance.

Respectfully submitted,
Rutan & Tucker, LLP

By:  11 Apr. 05
Norman E. Carte
Registration No. 30,455



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/039,066	01/04/2002	John M. Shemoun	101108.000.2451	
34284	7590	07/26/2004	12457-0002/JWR	9125
ROBERT D. FISH; RUTAN & TUCKER, LLP P.O. BOX 1950 611 ANTON BLVD., 14TH FLOOR COSTA MESA, CA 92628-1950			EXAMINER MATTHEWS, WILLIAM H	
			ART UNIT	PAPER NUMBER
			3738	

DATE MAILED: 07/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

10/039,066

Applicant(s)

SHAMOUN, JOHN M.

Examiner

William H. Matthews (Howie)

Art Unit

3738

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 18 May 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
 2. ☒ The proposed amendment(s) will not be entered because:
 (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ they raise the issue of new matter (see Note below);
 (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: "without using an image of the patient".

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
 4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
 6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
 7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

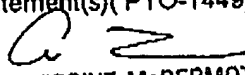
Claim(s) allowed: _____


Claim(s) objected to: _____

Claim(s) rejected: 1-20

Claim(s) withdrawn from consideration: _____

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
 9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
 10. ☐ Other: _____

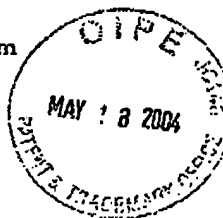

 CORRINE McDERMOTT
 SUPERVISORY PATENT EXAMINER
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 WHM 7-22-04

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Please acknowledge receipt of the following by affixing hereon the Official date stamp and returning this card to our office.

Title: Cosmetic Surgery Preview System
Inventor: Shamoun - John Shamoun, M.D.
Filing Date: 04 January 2002
Serial Number: 10/039066
Matter Type: Patent - US
Date of Deposit: 18 May 2004
Matter #: 101108.0002US1
Enclosures: (A) Transmittal Form; (B) Fee Transmittal; (C) Petition for 1 Month Extension of Time; (D) Amendment AF (Response to Final Office Action) (15 pages); (E) Check No. 3020690 for \$55.00; and (G) Return Receipt Postcard.



PTO/SB/21 (04-04)

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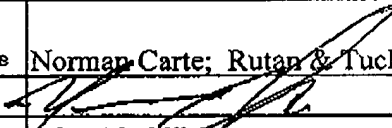
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
TRANSMITTAL FORM <i>(to be used for all correspondence after initial filing)</i>	Application Number	10/039,066	
	Filing Date	January 4, 2002	
	First Named Inventor	John M. Shamoun	
	Art Unit	3738	
	Examiner Name	William H. Matthews	
Total Number of Pages in This Submission	18	Attorney Docket Number	101108.0002US1

ENCLOSURES (Check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form <input checked="" type="checkbox"/> Fee Attached <input checked="" type="checkbox"/> Amendment/Reply <input checked="" type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input checked="" type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance Communication to Technology Center (TC) <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) (please identify below):
Remarks _____		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	Norman Carte; Rutan & Tucker, LLP
Signature	
Date	May 18, 2004

CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.			
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Signature		Date	05/18/2004

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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**FEE TRANSMITTAL
for FY 2004**

Effective 10/01/2003. Patent fees are subject to annual revision.

☒ Applicant claims small entity status. See 37 CFR 1.27**TOTAL AMOUNT OF PAYMENT** (\$)**55.00****Complete if Known**

Application Number	10/039,066
Filing Date	January 4, 2002
First Named Inventor	John M. Shamoun
Examiner Name	William H. Matthews
Art Unit	3738
Attorney Docket No.	101108.0002US1

METHOD OF PAYMENT (check all that apply)

☒ Check ☐ Credit card ☐ Money Order ☐ Other ☐ None

☐ Deposit Account:
Deposit Account Number: **502191**
Deposit Account Name: **Rutan & Tucker, LLP**

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☐ Charge fee(s) indicated below ☒ Credit any overpayments

☐ Charge any additional fee(s) or any underpayment of fee(s)

☐ Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

FEE CALCULATION**1. BASIC FILING FEE**

Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description	Fee Paid
1001 770	2001 385	Utility filing fee	
1002 340	2002 170	Design filing fee	
1003 530	2003 265	Plant filing fee	
1004 770	2004 385	Reissue filing fee	
1005 180	2005 80	Provisional filing fee	

SUBTOTAL (1) (\$)**2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE**

Total Claims -20** = X =

Independent Claims -3** = X =

Multiple Dependent =

Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description	Fee Paid
1202 18	2202 9	Claims in excess of 20	
1201 86	2201 43	Independent claims in excess of 3	
1203 280	2203 145	Multiple dependent claim, if not paid	
1204 86	2204 43	** Reissue independent claims over original patent	
1205 18	2205 9	** Reissue claims in excess of 20 and over original patent	

SUBTOTAL (2) (\$)

**or number previously paid. If greater: For Reissues, see above

FEE CALCULATION (continued)**3. ADDITIONAL FEES**

Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description	Fee Paid
1051 130	2051 65	Surcharge - late filing fee or oath	
1052 50	2052 25	Surcharge - late provisional filing fee or cover sheet	
1053 130	1053 130	Non-English specification	
1812 2,520	1812 2,520	For filing a request for <i>ex parte</i> reexamination	
1804 920*	1804 920*	Requesting publication of SIR prior to Examiner action	
1805 1,840*	1805 1,840*	Requesting publication of SIR after Examiner action	
1251 110	2251 55	Extension for reply within first month	55.00
1252 420	2252 210	Extension for reply within second month	
1253 950	2253 475	Extension for reply within third month	
1254 1,480	2254 740	Extension for reply within fourth month	
1255 2,010	2255 1,005	Extension for reply within fifth month	
1401 330	2401 165	Notice of Appeal	
1402 330	2402 165	Filing brief in support of an appeal	
1403 290	2403 145	Request for oral hearing	
1451 1,510	1451 1,510	Petition to institute a public use proceeding	
1452 110	2452 55	Petition to revive - unavoidable	
1453 1,330	2453 665	Petition to revive - unintentional	
1501 1,330	2501 665	Utility issue fee (or reissue)	
1502 480	2502 240	Design issue fee	
1503 640	2503 320	Plant issue fee	
1480 130	1480 130	Petitions to the Commissioner	
1807 50	1807 50	Processing fee under 37 CFR 1.17(q)	
1806 180	1806 180	Submission of Information Disclosure Stmt	
8021 40	8021 40	Recording each patent assignment per property (times number of properties)	
1809 770	2809 385	Filing a submission after final rejection (37 CFR 1.129(a))	
1810 770	2810 385	For each additional invention to be examined (37 CFR 1.129(b))	
1801 770	2801 385	Request for Continued Examination (RCE)	
1802 900	1802 900	Request for expedited examination of a design application	

Other fee (specify)

*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$) **55.00****SUBMITTED BY**Name (Print/Type) **Norman Carte**

Registration No. (Attorney/Agent)

30,455

(Complete if applicable)

Telephone **714-641-5100**

Signature

Date

May 18, 2004**WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**

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PTO/SB/22 (08-03)

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PETITION FOR EXTENSION OF TIME UNDER 37 CFR 1.136(a)		Docket Number (Optional) 101108.0002US1	
In re Application of John M. Shamoun			
Application Number 10/039,066		Filed January 4, 2002	
For COSMETIC SURGERY PREVIEW SYSTEM			
Art Unit 3738		Examiner William H. Matthews	

This is a request under the provisions of 37 CFR 1.136(a) to extend the period for filing a reply in the above identified application.

The requested extension and appropriate non-small-entity fee are as follows (check time period desired):

☒ One month (37 CFR 1.17(a)(1)) \$ 110.00

☐ Two months (37 CFR 1.17(a)(2)) \$ _____

☐ Three months (37 CFR 1.17(a)(3)) \$ _____

☐ Four months (37 CFR 1.17(a)(4)) \$ _____

☐ Five months (37 CFR 1.17(a)(5)) \$ _____

☒ Applicant claims small entity status. See 37 CFR 1.27. Therefore, the fee amount shown above is reduced by one-half, and the resulting fee is: \$ 55.00

☒ A check in the amount of the fee is enclosed.

☐ Payment by credit card. Form PTO-2038 is attached.

☐ The Director has already been authorized to change fees in this application to a Deposit Account.

☒ The Director is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account Number 502191.

I have enclosed a duplicate copy of this sheet.

I am the ☐ applicant/inventor.

☐ assignee of record of the entire interest. See 37 CFR 3.71.
Statement under 37 CFR 3.73(b) is enclosed (Form PTO/SB/96).

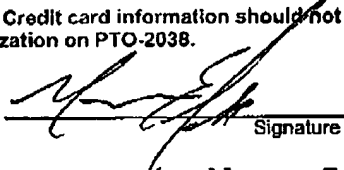
☒ attorney or agent of record. Registration Number 30,455

☐ attorney or agent under 37 CFR 1.34(a).
Registration number if acting under 37 CFR 1.34(a) _____

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

May 18, 2004
Date

(714) 641-5100
Telephone Number


Signature

Norman Carte
Typed or printed name

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

☒ Total of 1 forms are submitted.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Sharnoun, John M.
Application No. : 10/039,066
Filed : 01/04/2002
Title : COSMETIC SURGERY PREVIEW SYSTEM
Group./Div. : 3738
Examiner : Matthews, William H.
Client Matter : 101108.0002US1
Customer No. : 34284

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Commissioner for Patents
P.O. Box 1450
Washington, D.C. 20231

AMENDMENT AF

ART UNIT 3738

Dear Sir:

In response to the Final Office Action mailed January 21, 2004, please amend the above-identified patent application as follows:

Amendments to the Claims are reflected in the listing of claims, which begins on page 2 of this paper.

Remarks/Arguments begin on page 12 of this paper.

Amendments to the Claims:

This listing of claims will replace all prior listings.

Listing of Claims:

What is claimed is:

Claim 1 (currently amended) A method for providing a preview via a network of the potential effects of cosmetic surgery, the method comprising:

- selecting a cosmetic surgery procedure;
- asking at least one question regarding the body of a patient via the network;
- answering the question(s) via the network; and
- using the answers to form a preview image of the patient showing the potential effects of the selected cosmetic surgery procedure without using an image of the patient.

Claim 2 (previously presented) The method as recited in claim 1, wherein at least one image is provided in association with the question(s) so as to facilitate answering of the question(s).

Claim 3 (previously presented) The method as recited in claim 1, further comprising selecting at least one image which matches some characteristic of a patient.

Claim 4 (previously presented) The method as recited in claim 1, wherein selecting a cosmetic surgery procedure comprises selecting a cosmetic surgery category from the group consisting of:

- a cosmetic surgery procedure for the breasts;
- a cosmetic surgery procedure for the eyes;
- a cosmetic surgery procedure for the removal of fat;
- a cosmetic surgery procedure for the lips;
- a cosmetic surgery procedure for the ears;
- a cosmetic surgery procedure for the face;
- a cosmetic surgery procedure for the hair;
- a cosmetic surgery procedure for the mitigation of scar tissue;
- a cosmetic surgery procedure for the nose;
- a cosmetic surgery procedure for the chin; and

a cosmetic surgery procedure for the cheeks.

Claim 5 (previously presented) The method as recited in claim 4, wherein selecting a cosmetic surgery procedure comprises selecting a specific cosmetic surgery procedure.

Claim 6 (previously presented) The method as recited in claim 4, wherein selecting a cosmetic surgery procedure comprises selecting a specific cosmetic surgery procedure within the selected category.

Claim 7 (previously presented) The method as recited in claim 1, wherein selecting a cosmetic surgery procedure comprises selecting one of a plurality of different breast enhancement procedures.

Claim 8 (previously presented) The method as recited in claim 1, wherein asking at least one question comprises asking a plurality of questions about the present form, e.g., shapes, size, coloration, of body of the patient.

Claim 9 (previously presented) The method as recited in claim 1, wherein asking at least one question comprises asking at least one question about the history of the body of the patient.

Claim 10 (previously presented) The method as recited in claim 1, wherein asking at least one question comprises asking a plurality of multiple choice questions.

Claim 11 (currently amended) The method as recited in claim 1, wherein asking at least one question comprises asking at least some of the following questions having the following corresponding possible answers:

A) How would you describe your breasts?

I have never been pregnant and I have little, if any breast tissue;

I have very nice, small or medium sized B cup breasts with essentially no droopiness;

I have never been pregnant and have little or any breast tissue;

I have very nice C cup breasts with excellent shape and symmetry;

I had B cup breasts prior to pregnancy; at the time of pregnancy, I went to a C or D, and now I have shrunken, small A—B cup breasts with missing volume and not much droopiness;

I had C cup breasts until childbirth, at which time they became D cups; now I have large B cup to C cup breasts which appear droopy;

B) Age?;

C) Weight and height?;

D) Breast size: A cup, B cup, C cup, or D cup?;

E) I Do you have significant asymmetry? ;

Yes:

No:

F) My ancestral background is:

Asian;

Mid Eastern;

Afro—American;

American;

Hispanic;

G) My body type is:

Mesomorphic (muscular);

ectomorphic (very thin);

endomorphie (large boned);

H) I would describe my chest wall (if I cut my body in half and looked at it on cross-section) as:

barrel chest;

thin pencil chest;

normal cylinder;

abnormal because it is sunken in at the middle;

abnormal because it protrudes in the middle;

I) I would describe my breast tissue as:

dense (hard to the touch);

fatty (very soft to the touch);

mixed;

J) I would describe my breast shape as:

round;

tubular;

flat with no existing breast tissue, or breast tissue only at the level of the nipple or above, with no breast tissue below the nipple;

perfect teardrop;

K) I would describe my skin as:

stretchy with stretch marks;

very droopy;

thick, virgin type skin with excellent pliability;

L) I have had more than one pregnancy and have breast feed more than one child:

yes;

no;

M) My weight with the exception of pregnancy was within 10-20 lbs. of normal;

yes;

no;

- N) I would describe my areolae as:
dilated;
stretched and enlarged;
normal dimensions;
normal diameter, very small diameter (less than 3.5 cm);
- O) I would describe the pigment of my areola as:
darkly pigmented;
lightly pigmented;
- P) I would describe my nipple projection as:
large;
normal;
inverted;
- Q) Preexisting history of breast cancer in:
sister;
maternal relative;
one relative, two relatives, greater than two relatives;
- R) I prefer:
a very natural look to my breasts, (conservative);
for relatives or friends to not notice much of an enlargement in clothing; however,
when wearing skimpy clothes or a bathing suit, more noticeable image changes are apparent;
- S) In addition, I desire:
a very natural appearing breast when nude;
an obvious difference in clothing as well as nude and in all clothing wear;
a very fake looking breast with headlight appearance and round, full volume (very
unnatural look nude); and
obvious breast implant look.

Claim 12 (previously presented) The method as recited in claim 1, wherein asking at least one question comprises asking for a plurality of measurement results.

Claim 13 (previously presented) The method as recited in claim 1, wherein asking at least one question comprises asking for the following measurement results:

sternal notch to nipple distance;
bilateral inframammary crease to nipple distance;
nipple to nipple distance; and
bilateral base dimension.

Claim 14 (previously presented) The method as recited in claim 1, wherein asking at least one question comprises asking a plurality of multiple choice questions and asking for a plurality of measurement results.

Claim 15 (currently amended) The method as recited in claim 1, wherein using the answers to ~~from~~ form a preview image of the patient showing the potential effects of the selected cosmetic surgery procedure comprises using the answers to form a preview image of the affected body part.

Claim 16 (currently amended) The method as recited in claim 1, wherein using the answers to ~~from~~ form a preview image of the patient showing the potential effects of the selected cosmetic surgery procedure comprises selecting a pre-existing image which most closely matches a predicted outcome of the cosmetic surgery procedure.

Claim 17 (currently amended) The method as recited in claim 1, wherein using the answers to ~~from~~ form a preview image of the patient showing the potential effects of the selected cosmetic surgery procedure comprises generating a new image which most closely matches a predicted outcome of the cosmetic surgery procedure.

Claim 18 (currently amended) A method for showing potential results of a breast enhancement cosmetic surgery procedure via the Internet without requiring a picture of the prospective patient, the method comprising:

selecting a breast enhancement cosmetic surgery procedure to be performed; asking at least some of the following questions having the following corresponding possible answers:

A) How would you describe your breasts?

I have never been pregnant and I have little, if any breast tissue;

I have very nice, small or medium sized B cup breasts with essentially no droopiness;

I have been pregnant and have little or any breast tissue;

I have very nice C cup breasts with excellent shape and symmetry;

I had B cup breasts prior to pregnancy; at the time of pregnancy, I went to a C or D, and now I have shrunken, small A—B cup breasts with missing volume and not much droopiness;

I had C cup breasts until childbirth, at which time they became D cups; now I have large B cup to C cup breasts which appear droopy;

B) Age?

C) Weight and height?

D) Breast size: A cup, B cup, C cup, or D cup?;

E) Do you have significant asymmetry ?;

Yes;

No;

- F) My ancestral background is:
Asian;
Mid Eastern;
Afro—American;
American;
Hispanic;
- G) My body type is:
Mesomorphic (muscular);
ectomorphic (very thin);
endomorphie (large boned);
- H) I would describe my chest wall (if I cut my body in half and looked at it on cross—section) as:
barrel chest;
thin pencil chest;
normal cylinder;
abnormal because it is sunken in at the middle;
abnormal because it protrudes in the middle;
- I) I would describe my breast tissue as:
dense (hard to the touch);
fatty (very soft to the touch)
mixed;
- J) I would describe my breast shape as:
round;
tubular;
flat with no existing breast tissue, or breast tissue only at the level of the nipple or above, with no breast tissue below the nipple;
perfect teardrop;
- K) I would describe my skin as:

stretchy with stretch marks;

very droopy;

thick, virgin type skin with excellent pliability;

L) I have had more than one pregnancy and have breast feed more than one child:

yes;

no;

M) My weight with the exception of pregnancy was within 10—20 lbs. of normal;

yes;

no

N) I would describe my areolae as:

dilated;

stretched and enlarged;

normal dimensions;

normal diameter, very small diameter (less than 3.5 cm);

O) I would describe the pigment of my areola as:

darkly pigmented;

lightly pigmented;

P) I would describe my nipple projection as:

large;

normal;

inverted;

Q) Preexisting history of breast cancer in:

sister;

maternal relative;

one relative, two relatives, greater than two relatives;

R) I prefer:

a very natural look to my breasts, (conservative);
for relatives or friends to not notice much of an enlargement in clothing; however,
when wearing skimpy clothes or a bathing suit, more noticeable image changes are apparent;

S) In addition, I desire:
a very natural appearing breast when nude;
an obvious difference in clothing as well as nude and in all clothing wear;
a very fake looking breast with headlight appearance and round, full volume (very
unnatural look nude); and
obvious breast implant look.

Claim 19 (currently amended) A method for providing a preview via a network of
the potential effects of cosmetic surgery, the method comprising:
providing a selection of cosmetic surgery procedures;
asking at least one question regarding the body of a patient via the network;
receiving answers to the question(s) via the network; and
using the answers to form a preview image of the patient showing the potential
effects of the selected cosmetic surgery procedure without using an image of the patient.

Claim 20 (currently amended) A method for providing a preview via a network of
the potential effects of cosmetic surgery, the method comprising:
selecting a cosmetic surgery procedure;
asking at least one question regarding the body of a patient via the network;
selecting at least one image which matches an anatomical characteristic of a
patient via the network; and
using the selected image(s) to form a preview image of the patient showing the
potential effects of the selected cosmetic surgery procedure without using an image of the
patient.

REMARKS

This is a response to the final Office Action mailed January 21, 2004, in relation to the above-identified patent application. Claims 1-20 are presently pending. Claims 11, 19, and 20 have been amended by this response.

In the Office Action, the Examiner objected to claims 11, 19, and 20 based upon matters of formality. The claims have been amended accordingly.

The Examiner also rejected claims 1-20 under 35 U.S.C. 103(a) as being unpatentable over Massengill, in view of Broderick or Onyshkevych. In this rejection, the Examiner stated that "Massengill lacks the express written disclosure of performing the method without using an image of the patent." Thus, the Examiner is apparently relying upon either Broderick or Onyshkevych to cure the deficiencies of Massengill alone to make the claimed invention obvious.

The Examiner states that Broderick discloses "a method of providing a preview image of a cosmetic procedure for the eyes comprising asking multiple choice questions and using the answers over a network to form the image from a database of pre-existing images for the patent to select from and modify."

However, it is important to appreciate that a "cosmetic procedure" is not a cosmetic surgery procedure. Some of the important differences between a cosmetic procedure and a cosmetic surgery procedure include the techniques used (cutting or otherwise modifying tissue versus painting or otherwise changing the color or appearance of the skin); cost (surgery is much more expensive than the application of cosmetics); results (surgery tends to be permanent, whereas the application of cosmetics tends to be temporary); and reversibility (surgery tends to be difficult to reverse, whereas cosmetics can be easily removed).

Moreover, surgery and cosmetics tend to be practiced by different groups of people. Surgeons are highly trained, well educated, medical doctors. Cosmeticians are sales people.

The use of cosmetic contact lenses falls easily into the broad category of cosmetics and does not in any manner fall into the category of surgery. Thus, it is respectfully submitted that cosmetic surgery and the use of cosmetic contact lenses are in two widely divergent fields.

As such, it is respectfully submitted that the cosmetic contact lenses of Broderick constitute non-analogous art with respect to the cosmetic surgery as taught by Massengill and that the combination of Broderick with Massengill is thus improper. One looking to improve the cosmetic procedures of Massengill simply would not look to the teachings of cosmetics provided by the Broderick patent to find solutions to problems. There is thus no motivation to combine Massengill and Broderick.

The Examiner further states that Onyshkevych discloses "a method of providing internet based transactions, including cosmetic surgery, in which the user may answer qualitative and/or quantitative questions to produce a digitized image from a database or select a similar image from a database . . ."

However, it is important to appreciate that the Onyshkevych reference does not actually disclose any detail regarding the use of such a method in cosmetic surgery. Rather, the Onyshkevych reference teaches a method for determining the size of a garment and merely mentions that "alternate embodiments of the present invention include, but are not limited to, sporting equipment (equipment, protective gear, athletic wear); furniture (selection and design); home and personal products; cosmetics (matched or made for body/skin type) automotive, especially, ergonomics (car seats, baby seats); medical, prosthetics devices and diagnostic services; cosmetic surgery – visualization and solicitation; and health, diet, food – evaluation, recommendation, visualization and sales of product and services."

Cosmetic surgery is one item buried in a long laundry list of possible applications of the methodology of Onyshkevych. Even one intent on finding such a mention of cosmetic surgery in this reference could easily miss it.

More importantly, the mere mentioning that something is possible is not the same as a disclosure that is suitable for a rejection under 35 U.S.C. 103. In order to qualify as a proper

disclosure for use in a rejection under 35 U.S.C. 103, the disclosure must be sufficiently enabling so as to make the claimed subject matter obvious.

It is respectfully submitted that the material of Onyshkevych is so different from that of the present invention (garment fitting and sizing versus cosmetic surgery) that one would not look to Onyshkevych to solve cosmetic surgery problems in the first place, but even if one did, it certainly is not obvious that the teachings of Onyshkevych with respect to garment fitting and sizing can be applied to cosmetic surgery.

Onyshkevych completely lacks any teaching as to how its fitting and sizing techniques can be applied to cosmetic surgery, and thus does not qualify as a proper reference under 35 U.S.C. 103. It is not even clear that the fitting and sizing techniques of the Onyshkevych reference can actually be applied to cosmetic surgery.

Indeed, even if the fitting and sizing techniques can, in some fashion, be applied to cosmetic surgery, it is important to appreciate that these techniques tend to be inherently gross in their very nature. That is, the information needed for the fitting and sizing of garments is inherently less detailed than the information needed for the cosmetic surgery procedures of the present invention.

Cosmetic surgery is thus one of many applications in a long list of possibilities, without any specific disclosure of how the techniques described with respect to garment fitting may be applied to cosmetic surgery.

Further, the Onyshkevych reference is believed to constitute non-analogous art with respect to the Massengill reference. One looking to solve problems associated with cosmetic surgery simply would not look to garment fitting art for solutions. Thus, there is no motivation to combine the Onyshkevych reference with the Massengill reference.

It is further respectfully submitted that none of the cited prior art addresses the particular problems associated with breast enhancement cosmetic surgery or addresses any of the solutions to these problems addressed by the claimed subject matter.

In view of the foregoing, it is respectfully submitted that none of the cited references, taken either alone or in combination with one another, either disclose or make obvious "selecting a cosmetic surgery procedure; asking at least one question regarding the body of a patient via the network; answering the question(s) via the network; and using the answers to form a preview image of the patent showing the potential effects of the selected cosmetic surgery procedure without using an image of the patient," as recited in independent claim 1.

It is further respectfully submitted that none of the cited references, taken either alone or in combination with one another, either disclose or make obvious "selecting a breast enhancement cosmetic surgery procedure" and asking the specific questions of independent claim 18.

It is further respectfully submitted that the dependent claims are independently patentable with respect to the independent claims. None of the cited references either disclose or make obvious the detail of the limitations of the dependent claims. For example, none of the cited references either disclose or make obvious the questions relating to breast surgery of dependent claim 11.

Applicant respectfully request that the Examiner withdraw the holding of finality because the Examiner cited new prior art for new grounds of rejection in this Office Action.

Applicant respectfully submits that all of the claims of the subject patent application are in condition for immediate allowance. Application respectfully requests reconsideration and an early allowance.

Respectfully submitted,
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By:  11 April '05

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